

# WATER

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If the project requires water use, a water supply, or discharges wastes into state waters, the following regulations may apply.

## DAMS AND RESERVOIRS

### 1. Types of Activities Regulated

The Federal Energy Regulatory Commission licenses and inspects hydropower dams (see HYDROELECTRIC POWER DEVELOPMENT p. 40). The U.S. Department of the Army, Corps of Engineers ensures compliance with regulations governing navigable waters (see STREAM BEDS - STREAM BANKS - WETLANDS, p. 11). If the proposed dam facility will be on a stream located on state-owned lands, a lease or license must be obtained from the Board of Land Commissioners (see STATE LANDS, p. 8). The Montana Department of Natural Resources and Conservation (DNRC) should be contacted to acquire any necessary water permit or change authorization (see WATER APPROPRIATIONS - SURFACE DIVERSIONS, p. 179).

A person proposing to construct a dam or reservoir must submit an application to the DNRC for a determination of whether the dam or reservoir is classified as high-hazard.<sup>1</sup> A dam owner must also obtain a dam safety construction permit from the DNRC prior to constructing, enlarging, removing, extensively repairing or altering a high-hazard dam. Before operating a high-hazard dam, a dam safety operation permit must be obtained from the department. There are several categories of dams that are exempt from these requirements, including federal dams and reservoirs and dams regulated by the Federal Energy Regulatory Commission. At its discretion, or upon complaint, the DNRC may inspect any dam on state waters.

Statute: 85-15-105, *et seq.*, MCA (Montana Dam Safety Act)

Contact: DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION  
Water Resources Division  
*Water Operations Bureau*

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<sup>1</sup> A high-hazard dam is a dam or reservoir with an impounding capacity of 50 acre-feet or more at the maximum normal operating pool, the failure of which would be likely to cause loss of life.

## 2. **Application Requirements**

- A. For a hazard classification, the dam owner must apply for a determination from the DNRC. The owner must submit an application to the department with information describing the dam or reservoir, including its capacity, purpose and location.
- B. For a construction permit, the dam owner must submit an application form, an engineering design report and three sets of construction plans and specifications.
- C. For an operation permit, the dam owner must submit an application that includes an operation plan. An inspection report is also required except for in the case of a new dam for which a construction permit has been issued.

Statute: 85-15-209 through 212, MCA

Rule: ARM 36.14.201-204, 36.14.301, *et seq.* and 36.14.401-403

## 3. **Permitting Procedures**

- A. The DNRC will notify the applicant for a dam hazard classification of its receipt of the application within 10 days and will advise the applicant if it requires additional information. The DNRC will then schedule an inspection with the dam owner to gather information to make a hazard determination. The department will base its decision on the consequences of dam failure, not its condition, probability or risk. The DNRC has 60 days after the receipt of a completed application to make its determination.
- B. Within 30 days after receipt of an application for a construction permit, the DNRC will notify the applicant of any errors or omissions and request any additional information necessary to evaluate the application. The DNRC has 60 days after receiving the application to issue the permit, deny the permit, or issue the permit with conditions or modifications.
- C. Within 30 days after receipt of an application for an operating permit, the DNRC will notify the applicant of any errors or omissions and request any additional information necessary to evaluate the application. After receipt of all required information, the DNRC has 90 days to issue or deny the permit. The permit is valid for up to five years.

Rule: ARM 36.14.205-208, 36.14.301, *et seq.* and 36.14.401, *et seq.*

#### 4. Fees

There is a \$125 inspection fee for a hazard classification. There are no application fees for either the construction or operation permit.

Rule: ARM 36.14.204

### PUBLIC WATER SUPPLY

#### 1. Types of Activities Regulated

A water system that has at least 15 service connections or that regularly serves at least 25 persons daily for any 60 or more days in a calendar year is regulated as a public water supply by the Montana Department of Environmental Quality (DEQ). Plans and specifications for public water supply sources must be approved, as well as plans for construction, alteration or extensions of any water system or treatment facilities. Operators in charge of community public water supplies and nontransient noncommunity public water supplies must be certified by the DEQ.

Water supply systems for food and lodging establishments that do not serve 15 or more service connections or 25 or more people for any 60 or more days in a calendar year are regulated by the Montana Department of Public Health and Human Services.

Statute: 37-42-101, *et seq.*, MCA (water treatment plant operators)  
 50-50-101, *et seq.*, MCA (private systems for food and lodging establishments)  
 75-6-101, *et seq.*, MCA (public water supply systems)

Rule: ARM 17.38.101 and 102

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
 Permitting and Compliance Division  
*Public Water Supply and Subdivisions Bureau*

DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES  
 Health Policy and Services Division  
*Food and Consumer Safety Section*

#### 2. Application Requirements

- 1) Prior to operating, constructing, altering or extending a public water supply, the applicant must submit an engineering report along with the

necessary plans and specifications to the DEQ or a delegated division of local government for review and written approval.

- 2) The engineering report, plans and specifications for a community public water supply must be prepared and designed by a professional engineer according to specific engineering criteria. An engineer may be required to prepare plans and specifications for a noncommunity public water supply when the complexity of the proposed system warrants that level of involvement by an engineer.
- 3) The applicant must identify the legal entity responsible for the ownership, operation, maintenance and perpetuation of the public water supply system. If a change of ownership occurs, the DEQ must receive written notice within 30 days.
- 4) The department has 60 days to approve, approve with conditions, deny the application, or to request more information. The DEQ or a delegated division of local government will issue a written approval for a public water supply system if it determines that the design report, plans and specifications are complete and the applicant has complied with department rules.
- 5) If construction, alteration or extension of the community public water supply system has not been completed within three years after approval, the applicant must resubmit all of the information required in 1-3 above.
- 6) A person may not begin operation of any portion of a public water supply system subject to plan review until the project engineer (for community systems) or owner (for noncommunity systems) certifies to the DEQ that the required work was completed according to the approved plans and specifications. Within 90 days after completion of construction, a complete set of certified as-built drawings must be submitted to the department.

Rule: ARM 17.38.101

### 3. Fees

A schedule of fees for plan review is listed in ARM 17.38.106. The fees must be paid before plan approval may be issued.

An annual active service connection fee is required and must be postmarked or delivered to the DEQ by March 1st. The annual fee for a community public water supply system is \$2 per service connection, with a \$100 fee minimum. The annual fee for a

nontransient, noncommunity public water supply system is \$100. The annual fee for any other noncommunity public water supply system is \$50.

Water treatment operators must pay a \$70 application fee that entitles the applicant to take one or more exams for 12 months from the date of application. Each exam is \$70. The annual renewal fee is \$30 and must be postmarked or delivered to the department by June 30th.

Statute: 37-42-304 and 75-6-103 and 108, MCA

Rule: ARM 17.38.106, 17.38.248 and 17.40.212

#### 4. **Additional Information**

##### Montana Source Water Protection Program (Wellhead Protection Program)

The DEQ has the authority to administer a wellhead protection program that allows for the certification of local wellhead protection areas and the review of wellhead protection area ordinances. A supplier of a public water supply system may voluntarily submit a petition to the DEQ to establish a wellhead protection program for the system. The governing body of a county in which a wellhead protection area or areas exist may adopt an ordinance to regulate, control and prohibit conditions that threaten the quality of water used within the wellhead protection area or areas.

Statute: 75-6-120, MCA

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Planning, Prevention and Assistance Division  
*Technical and Financial Assistance Bureau*

## **SEPTIC TANKS, CESSPOOLS AND PRIVIES**

### 1. **Types of Activities Regulated**

A person may not engage in the business of cleaning cesspools, septic tanks, portable toilets, privies, grease traps, car wash sumps, or similar treatment works, or disposal of septage and other wastes from these sources, unless licensed by the Montana Department of Environmental Quality (DEQ). Hazardous wastes are regulated separately (see HAZARDOUS WASTE DISPOSAL, p. 139).

Statute: 75-10-1211 through 1223, MCA

Rule: ARM 17.50.801, *et seq.*

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Permitting and Compliance Division  
*Waste and Underground Tank Management Bureau*

## 2. **Application Requirements**

Applications for licenses must be made to the DEQ on forms provided by the department. The application must contain the licensee's name and address; a list of counties in which business will be conducted; a list of disposal sites; and the estimated volume of septage and other wastes to be disposed of at each disposal site annually. The DEQ requires additional information that is described in department rules for each disposal site proposed for use by the applicant. Licenses expire on December 31st of each year and are nontransferable.

Statute: 75-10-1211 and 1212, MCA

Rule: ARM 17.50.803

## 3. **Permitting Procedures**

The DEQ will review an application for a new or renewed license to ensure that it is complete. If additional information is required, the DEQ will send the applicant written notification. After receiving a completed application, the DEQ will notify the relevant local health officer or designated representative. The department may not issue a license until 14 days after notifying the local health officer or designated representative in order to allow them a period for review and comment. A license is issued within 30 days after the DEQ's decision to approve the license.

## 4. **Fees**

The annual license fee is \$300. A late fee of \$125 is assessed by the DEQ for failure to renew a license before January 31st of the year following the license expiration.

Statute: 75-10-1201 through 1223, MCA

Rule: ARM 17.50.803

## SEWER SYSTEMS

### 1. Types of Activities Regulated

Approval from the Montana Department of Environmental Quality (DEQ) is required to construct, alter or extend a public sewer system serving 15 or more families or 25 or more persons daily for any 60 or more days in a calendar year. Plans and specifications must be approved for construction, alteration or extensions of any wastewater system or treatment facilities. Operators in charge of public wastewater treatment systems must be licensed by the DEQ.

Statute: 75-6-101, *et seq.*, MCA

Rule: ARM 17.38.101 and 102

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Permitting and Compliance Division  
*Public Water Supply and Subdivisions Bureau*

BOARD OF WATER AND WASTEWATER OPERATORS

### 2. Application Requirements

- 1) Prior to operating, constructing, altering or extending a public sewer system, the applicant must submit an engineering report along with the necessary plans and specifications to the DEQ or a delegated division of local government for review and written approval.
- 2) The engineering report, plans and specifications for a public sewer system must be prepared and designed by a professional engineer licensed in the state of Montana according to specific engineering criteria developed by the DEQ.
- 3) The applicant must identify the legal entity responsible for the ownership, operation, maintenance and perpetuation of the public sewer system. If a change of ownership occurs, the DEQ must receive written notice within 30 days.
- 4) The DEQ has 60 days to approve, approve with conditions, deny the application or to request more information. The DEQ or a delegated division of local government will issue a written approval for a public sewer system if it determines that the design report, plans and specifications are complete and the applicant has complied with department rules.

- 5) If construction, alteration or extension of the public sewer system has not been completed within three years after approval, the applicant must resubmit all of the information required in 1-3 above.
- 6) A proposed public sewer system subject to permitting under the Montana Water Quality Act (75-5-101 *et seq.*) is exempt from the review. See WATER QUALITY PERMITTING, p. 185.
- 7) A person may not commence operation of any portion of a public wastewater system subject to plan review until the project engineer (for community systems) or owner (for noncommunity systems) certifies to the DEQ that the required work was completed according to the approved plans and specifications. Within 90 days after completion or construction, a complete set of as-built drawings must be submitted to the department.

Rule: ARM 17.38.101

### 3. Fees

A schedule of fees for plan review is listed in ARM 17.38.106. The fees must be paid before plan approval may be issued.

Wastewater treatment operators must pay a \$70 application fee that entitles the applicant to take one or more exams for 12 months from the date of application. Each exam is \$70. The annual renewal fee is \$40 and must be postmarked or delivered to the DEQ by June 30th.

Statute: 76-6-103, MCA

Rule: ARM 17.38.106 and 17.40.212

## WATER APPROPRIATIONS - GROUND WATER

1. **Types of Activities Regulated - all new ground water use or changes to existing ground water rights**
  - A. A **ground water appropriation** that will exceed 35 gallons of water a minute or 10 acre-feet of water a year, or that is inside an established



controlled ground water area or applicable compact area,<sup>2</sup> must be permitted by the Montana Department of Natural Resources and Conservation (DNRC) before the water is put to beneficial use.

- B. A person appropriating 35 gallons of water a minute or less, with an annual volume of 10 acre-feet or less, is not required to obtain a permit before beginning a project. However, within 60 days after the well is completed or the ground water spring is developed and the water put to beneficial use, the individual must file a **notice of completion of ground water development** with the DNRC. A certificate of water right will be issued. See also WATER WELLS, p. 192.

If a person appropriating water does not have a possessory interest in the property from which the water will be withdrawn, that person must notify the landowner 30 days before any related construction or appropriation begins.

A combined appropriation of two or more wells or developed springs from the same source that meet these conditions requires a permit.

- C. For appropriations of ground water in excess of 3,000 acre-feet per year, the DNRC's decision to issue a permit must be affirmed by the Legislature, except for municipal use, public water supplies or for irrigation of cropland owned and operated by the applicant.
- D. A permit is not required for a water user who must replace an existing well if the well does not exceed 35 gallons a minute and 10 acre-feet a year or 450 gallons a minute for a municipal well. Also, the existing well must be abandoned and the volume and rate of water used by the replacement well must be equal to or less than the existing well. In addition, the new well must draw from the same aquifer and a **notice of replacement well** must be filed with the DNRC after the replacement well is completed.
- E. A **change in place of use, point of diversion, place of storage or purpose of use** of an appropriated water right requires approval by the DNRC. An application to change must be submitted if a water right will be leased to someone or if a temporary change is desired. The historic use of the water rights to be changed must be provided.

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<sup>2</sup> A compact area is one in which the Montana Reserved Water Rights Compact Commission has completed a negotiated settlement with a tribal group or federal agency.

- F. An appropriator may change a water right without the prior approval of the DNRC to construct a redundant water supply well in a public water supply system if the new water supply well withdraws water from the same source as the original well and is required by a state or federal agency. Only one well may be used at one time. Within 60 days of completion of a redundant water supply well, the appropriator must file a **notice of construction of the well** with the DNRC.
- G. Approval from the DNRC is not required for leasing all or part of an appropriation right for **road construction or dust abatement** as long as the DNRC's requirements for the lease are met. The public must be given notice in the manner described in statute at least 30 days before the use of the water, and the lease agreement must be submitted to the DNRC at least two days before the use of the water. In addition to other conditions, the lease term may not exceed 90 days or 60,000 gallons of water per day.

Statute: 85-2-301, *et seq*, MCA

Rule: ARM 36.12.101-122 and 36.12.1301-2001

Contact: DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION  
Water Resources Division  
*Water Rights Bureau Office in Helena*; or local Water Resources  
Regional Offices (see APPENDIX 2)

## 2. Application Requirements

For application permitting procedures for obtaining a water right permit or a change authorization, see WATER APPROPRIATIONS - SURFACE DIVERSIONS, below.

## 3. Permitting Procedures

For permitting procedures for obtaining a water right permit or a change authorization, see WATER APPROPRIATIONS - SURFACE DIVERSIONS, below.

#### 4. **Additional Ground Water Information**

##### A. Controlled Ground Water Area

Controlled ground water areas may be established by the DNRC on its own motion or upon petition. Several controlled ground water areas have been established. In a **controlled ground water area**, anyone wishing to appropriate water must apply for and receive a permit or follow the requirements of the controlled ground water area order. Some controlled ground water areas have additional restrictions. Contact the DNRC to determine the location of controlled ground water areas and to determine special requirements applicable to a particular controlled ground water area.

Statute: 85-2-506 through 508, MCA

##### B. Coal Bed Methane Wells

Ground water produced as a result of **coal bed methane development** has special management requirements. The produced water must be put to beneficial use, reinjected to an acceptable subsurface area, discharged to the surface or surface waters, or managed by other legal means. Developers of coal bed methane wells must offer mitigation agreements to area appropriators whose point of diversion is within one mile of the coal bed methane well or one-half mile of a well that is adversely affected by the coal bed methane well.

Statute: 82-11-175, MCA

### **WATER APPROPRIATIONS - SURFACE DIVERSIONS**

#### 1. **Types of Activities Regulated - all new surface water use or changes to existing surface water rights**

State waters may be appropriated for *beneficial uses*. These uses include, but are not limited to, agricultural, domestic, fish and wildlife, mining, industrial, irrigation, municipal, power and recreational uses (see 85-2-102(2) for a complete definition).

- A. A **permit to appropriate water** for a beneficial use is required from the Montana Department of Natural Resources and Conservation (DNRC) before beginning a project that proposes the use of unappropriated water. Application forms are available from the DNRC Water Rights Bureau Office in Helena and the eight local Water Resources Regional Offices.

- B. A permit to appropriate water is not required for construction of a pit or reservoir for use by livestock if: 1) the pit or reservoir has a maximum capacity of less than 15 acre-feet of water, 2) the impoundment is constructed on and will be accessible to a parcel of land that is owned or controlled by the applicant and that is at least 40 acres in size, and 3) the appropriation is less than 30 acre-feet per year and is from a non-perennial flowing stream. However, an application for a **provisional permit for a completed stockwater pit or reservoir** must be submitted to the DNRC within 60 days after construction of the pit or reservoir. If the pit or reservoir adversely affects prior water rights, the DNRC may require modifications or revoke the permit.
- C. An applicant may apply for a **temporary permit to appropriate water** if the use is for a limited period of time, i.e., for road construction or oil and gas exploration. The applicant must meet the criteria listed in 3.(2) on the following page. Permits expire on the date noted in the application.
- D. A **change in place of use, point of diversion, place of storage or purpose of use** of an appropriated water right also requires approval by the DNRC. An application to change must be submitted if a water right will be leased to someone or if a temporary change is desired. The historic use of the water rights to be changed must be provided.
- E. A water user or the Montana Department of Fish, Wildlife and Parks may apply to **temporarily change or lease a water right for instream flow** to maintain or enhance instream flow to benefit the fishery resource.
- F. The state, the federal government or their subdivisions may apply for **reservations of water** for existing or future beneficial uses, or to maintain a minimum flow, level or quality of water. The application must be filed with the DNRC which has the authority to grant, deny or modify the reservation.

Statute: 85-2-301, *et seq.* and 85-2-402, *et seq.*, MCA

Rule: ARM 36.12.101-106 and 36.16.103-106

Contact: DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION  
Water Resources Division  
*Water Rights Bureau Office in Helena; or local Water Resources  
Regional Offices (see APPENDIX 2)*

## 2. Application Requirements

An application for a **beneficial water use permit** or an application to **change a water right** must be made on forms available from the DNRC. The department has 180 days to notify the applicant of any defects in an application. If the DNRC does not notify the applicant of any defects within 180 days, the application must be considered correct and complete. An incorrect or incomplete application does not lose its filing priority if it is corrected and refiled within 30 days or as the DNRC may allow, up to three months. An application not corrected within three months is by law terminated.

To apply for a **water reservation**, the state or a political subdivision or the federal government must submit an application to the DNRC. Individuals may not make this application. Applications are processed and investigated by the department. The DNRC must make findings concerning the purpose and need for the water reservation, the amount of water necessary and whether the proposed use is in the public interest.

Statute: 85-2-301, *et seq.* and 85-2-402, MCA

Rule: ARM 36.12.101-122, 36.12.1301-2001 and 36.16.101-118

## 3. Application Procedures

- 1) The application process for a **permit or change approval** may take 1 year or longer. The DNRC will prepare a notice on the application that the applicant must publish one time in an area newspaper.
- 2) Individuals may file written objections to the permit or change application within the time period stated on the public notice associated with the application. An objection must be correct and complete and include the name and address of the objector.
  - A. For a **permit** application, an objector must provide information that explains why one or more of the criteria in 85-2-311, MCA can not be met. These criteria are:
    - ❶ There is water physically available at the proposed point of diversion in the amount that the applicant seeks to appropriate.
    - ❷ Water can reasonably be considered legally available during the period in which the applicant seeks to appropriate, in the amount requested.

- ③ The water rights of a prior appropriator under an existing water right, a certificate, a permit or a state water reservation will not be adversely affected.
- ④ The proposed means of diversion, construction and operation of the appropriation works are adequate.
- ⑤ The proposed use of water is a beneficial use.
- ⑥ The applicant has possessory interest, or the written consent of the person with the possessory interest, in the property where the water will be put to beneficial use.
- ⑦ The water quality of a prior appropriator will not be adversely affected.
- ⑧ The proposed use will be in accordance with the water classification for the source of supply.
- ⑨ The ability of a discharge permit holder to satisfy effluent limitations will not be adversely affected.

B. For a **change** application, an objector must provide information that explains why one or more of the criteria in 85-2-402, MCA can not be met. These criteria are:

- ① The proposed change in appropriation right will not adversely affect the use of existing water rights.
- ② Except for lease applications related to the Montana Department of Fish, Wildlife and Parks pilot water leasing program or a temporary change in an appropriation right authorization to improve stream flows—the proposed means of diversion, construction and operation of the appropriation works are adequate.
- ③ The proposed use is beneficial.
- ④ Except for lease applications related to the Montana Department of Fish, Wildlife and Parks pilot water leasing program or a temporary change in an appropriation right authorization to improve stream flows—the applicant has possessory interest or the written consent of the person with

possessory interest in the property where water will be put to beneficial use.

- ⑤ If the change in appropriation right involves salvaged water, the proposed water-saving methods will salvage at least the amount of water asserted by the applicant.
  - ⑥ The water quality of a prior appropriator will not be adversely affected.
  - ⑦ The ability of a discharge permit holder to satisfy effluent limitations will not be adversely affected.
- 3) If the DNRC determines that objections to an application are valid, it will hold a hearing unless the parties reach an agreement.
  - 4) If a hearing is held on objections to an application, a proposed order will be prepared and sent to all parties of record in the case. A party who disagrees with the order may file an exception and request an oral argument hearing before a final order is issued. The applicant or objector may file an appeal to the final order with the District Court within 30 days after receiving notice of the decision.
  - 5) If no objection to the application is filed but the DNRC determines that the application should be approved in a modified form or denied, it will serve a statement of opinion to the applicant, along with notice that the applicant may file a request for a hearing within 30 days.
  - 6) The DNRC may issue a permit for less than the amount of water requested, but in no case may it issue a permit for more water than is requested or that can be beneficially used. The DNRC must state the time limits for commencement of the appropriation work, completion of construction and actual application of the water to the proposed beneficial use.
  - 7) PERMITS ARE PROVISIONAL UNTIL ALL CLAIMS OF EXISTING WATER RIGHTS IN A BASIN OR SUBBASIN HAVE BEEN ADJUDICATED IN THE STATE WATER COURT.<sup>3</sup>

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<sup>3</sup> Permits for new water use have been required since July 1, 1973. Water rights claimed before that date are currently being quantified and recorded through a statewide water adjudication process. Contact the Montana Water Court or the DNRC for adjudication procedures.

- 8) Change authorizations are limited to the amount of the historic use recognized by the DNRC. If the historic use is reduced under adjudication proceedings, the authorization will be limited to the lesser amount.

Statute: 85-2-307 through 315 and 402, MCA  
2-4-101, *et seq.*, MCA (Montana Administrative Procedures Act)

Rule: ARM 36.12.201-234 and 36.16.107

#### 4. **Fees**

Fees vary according to the type of application and are due at the time the application is submitted. For a schedule of fees see ARM 36.12.103 or contact the DNRC.

Statute: 85-2-113, MCA

Rule: ARM 36.12.103

#### 5. **Criteria**

Regardless of whether objections are received, the DNRC must base its decision for issuance of a permit on the criteria found in 85-2-311, MCA. Approval for an Application to Change a Water Right is based on the criteria in 85-2-402, MCA. All permits and change applications are subject to prior existing water rights and the final determination of those rights. Other conditions may be imposed to protect the rights of other water right appropriators on a case-by-case basis.

Statute: 85-2-311, 312 and 402, MCA

Rule: ARM 36.12.104

#### 6. **Additional Information**

##### A. Closed Basins

Several highly appropriated basins have been closed by the Legislature or the DNRC. Issuance of water use permits in these basins is limited, although issuance of permits for certain uses is usually allowed. Contact the DNRC to determine the location of basin closures and to determine the limits that apply to a particular basin.



Statute: 85-2-319, 321 through 323, 329 through 337, 341 through 344, 350 through 351 and Title 85, chapter 20.

Rule: ARM 36.12.1001, *et seq.*

B. Water Right Ownership Update

A **change of ownership** of a water right must be disclosed with a realty transfer certificate and recorded with the DNRC by filing a Water Right Ownership Update within 60 days of filing the deed.

Statute: 85-2-423, 424, and 426

Rule: ARM 36.12.103

## WATER QUALITY PERMITTING

The Department of Environmental Quality, under the authority of the Montana Water Quality Act ( 75-5-101 *et seq.*, MCA), regulates the discharge of pollutants into state waters through the adoption of water quality standards and the permit application process. Water quality standards specify what changes in water quality are allowed during the use of state waters and establish a basis for wastewater discharge permitting.

## DISCHARGE PERMITS

### 1. Types of Activities Regulated

A Montana Pollutant Discharge Elimination System (MPDES) permit or a Montana Ground Water Pollution Control System (MGWPCS) permit is required from the Montana Department of Environmental Quality (DEQ) to construct, modify or operate a disposal system or to construct or use any outlet for discharge of sewage, industrial or other wastes into state surface or ground water. A permit is not required for the discharge of certain wastes under specific circumstances (see ARM 17.30.1022 and 17.30.1310 and 75-5-401(1)(b) and 75-5-401(5), MCA).

Statute: 75-5-101, *et seq.*, MCA (Montana Water Quality Act)

Rule: ARM 17.30.1301, *et seq.* (MPDES permit )  
ARM 17.30.1001, *et seq.* (MGWPCS permit)

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Permitting and Compliance Division

*Water Protection Bureau***2. Application Requirements**

**MPDES Permits - General:** The DEQ may issue a general MPDES permit to cover all facilities that engage in a general type of activity in a discrete geographical region, or statewide. These categories include, among others, storm water point sources,<sup>4</sup> suction dredge mining operations and construction dewatering operations. Applications must be submitted 30 days before the initiation of a proposed discharge.

**MPDES Permits - Individual:** Individual MPDES permits are required for facility-specific industrial, commercial or municipal discharges. An application must be filed at least 180 days prior to the operation of a point source. Application information must include plans and specifications, site plans, descriptions of adjacent state waters, soil conditions, ground water characteristics, process and waste flow diagrams and the volume and nature of projected discharges. Storm water discharges may be incorporated into this application, permitted under a separate individual MPDES permit or permitted under a general MPDES permit.

**MGWPCS Permits:** An application for a Montana Ground Water Pollution Control System (MGWPCS) permit must be filed at least 180 days prior to the operation of a point source. Application information must include a site plan; the location of treatment works and disposal systems; the location of adjacent surface waters; a list of surface owners and lessees, water supply wells and springs and a description of ground water quality and uses within one mile of the source; and other information that the DEQ considers necessary to process the application.

Statute: 75-5-401, *et seq.*, MCA

Rule: ARM 17.30.1023, 1301 and 1341

**3. Permitting Procedures****MPDES General Permits**

- 1) Within 30 days of receiving a completed application, the DEQ will issue an authorization to operate under a general MPDES permit, or notify the applicant that the source does not qualify, citing one or more of the

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<sup>4</sup> A point source is an identifiable point where pollutants are discharged, including pipes, ditches, channels, sewers and tunnels.

reasons listed in ARM 17.30.1341(4)(a-e). The public must be given notice and a 30 day comment period allowed if the source can not qualify to operate under a general MPDES permit.

- 2) If an authorization to operate under a general MPDES permit is denied, the DEQ will process the application as an individual MPDES permit, unless the application is withdrawn.
- 3) All MPDES permits are issued for a fixed term, not to exceed five years.

#### MPDES Individual and MGWPCS Permits

- 1) On receipt of the permit application, the DEQ must make a tentative determination with respect to issuance or denial of an MPDES or MGWPCS permit. The DEQ is then required to issue a public notice to inform interested persons of the proposed discharge and of the tentative determination. At least 30 days are provided for written comments from the public regarding the application. Public hearings may be held on the DEQ's own initiative or at the request of another agency or interested person.
- 2) The DEQ has 60 days to review new permit applications for completeness and 30 days for completeness review of deficiency responses. During the processing of applications, the DEQ also determines discharge limits and the length of mixing zones<sup>5</sup> to ensure water quality standards are met. Hearings must be held in the geographical area of the proposed discharge.
- 3) If the DEQ denies the discharge permit, the applicant may appeal the decision to the Board of Environmental Review (BER). The hearing must be held within 30 days of the receipt of the written request.
- 4) All MPDES permits are issued for a fixed term, not to exceed five years. All MGWPCS permits are issued for a fixed term, not to exceed 10 years.

Statute: 75-5-403, MCA

Rule: ARM 17.30.1301, *et seq.*, and 17.30.1024, *et seq.*

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<sup>5</sup> Mixing zones are established areas where water quality standards may be exceeded while a discharge is mixed with receiving waters.

#### 4. Fees

The DEQ assesses fees to cover a portion of the costs of implementing the water quality program. For a schedule of fees see ARM 17.30.201.

Statute: 75-5-516, MCA

Rule: ARM 17.30.201

#### 5. Additional Information

Short-term Exemptions: The DEQ may authorize short-term turbidity standards for construction projects that affect water bodies (318 standards). The DEQ may also authorize short-term exemptions from the water quality standards (308 exemptions) for the purposes of emergency remediation that has been approved, authorized or required by the DEQ and application of an EPA-registered pesticide when it is used to control nuisance aquatic organisms or to eliminate undesirable and nonnative aquatic species. The DEQ must issue the authorization before the applicant may begin the activity.

Leaching pads, tailing ponds or water, waste or product holding facilities must be designed and constructed, operated and maintained to prevent discharge, seepage, drainage, infiltration or flow which may result in the pollution of state waters. Plans and specifications for tailings ponds, leaching pads and holding facilities used in ore processing must be submitted to the DEQ for review and approval at least 180 days prior to the beginning of operations.

Statute: 75-5-308 and 75-5-318, MCA

Rule: ARM 17.30.637

#### 6. Criteria

All discharges of pollutants into state waters authorized by a discharge permit must be consistent with the conditions of the permit. The discharge of pollutants into state waters in excess of the permit's restrictions constitutes a violation of the permit. State waters must be free of discharges that settle to form sludge deposits; create floating debris; produce odors; create toxic concentrations harmful to human, animal, plant and aquatic life; or create conditions capable of producing undesirable aquatic life. All discharges must meet water quality standards.

Rule: ARM 17.30.637, 1030 and 1342

## NONDEGRADATION REVIEW

The state's nondegradation policy outlines three levels of water protection, stipulating what level of degradation, if any, is allowed in each level. For waters classified as *outstanding resource waters*, (see p. 190) the DEQ may not grant an authorization to degrade. The state may authorize degradation of *high quality waters* up to but not exceeding water quality standards. For *other waters* not classified as outstanding resource waters or high quality waters, there is no nondegradation review requirement, but water quality standards and discharge permit conditions still apply.

### 1. Types of Activities Regulated

A person proposing an activity that may degrade *high quality waters* must 1) make a self-determination that the activity is nonsignificant using the standards in ARM 17.30.715 and 17.30.716, 2) receive a determination of nonsignificance from the Montana Department of Environmental Quality (DEQ) or, 3) if the activity is not within the definition of nonsignificant, petition the DEQ for an authorization to degrade. For all activities that are licensed, permitted, approved or otherwise authorized by the DEQ, the department will make the determination whether the activity may cause degradation.

Statute: 75-5-303 and 317, MCA

Rule: ARM 17.30.701-708 and 715-716

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY  
Permitting and Compliance Division  
*Water Protection Bureau*

### 2. Application Requirements

If a proposed activity will cause significant degradation of high quality waters and the applicant wishes to continue with the proposed activity, the DEQ will require the applicant to submit information necessary for the department to determine: 1) the degradation is necessary because there are no feasible modifications to the proposed project that would result in no degradation, 2) the proposed project will result in important economic or social development and the benefit of the development exceeds the costs to society of degrading high quality waters, 3) existing and anticipated use of state waters will be fully protected and 4) the least degrading water quality protection practices determined by the department to be economically, environmentally and technologically feasible will be fully implemented by the applicant prior to, during and after the proposed activity.

Statute: 75-5-303, MCA

Rule: ARM 17.30.706-708

### 3. **Permitting Procedures**

- 1) The DEQ must review an Application for Determination of Significance and make its decision on the application within 60 days. If the DEQ determines that the activity will cause degradation, and the applicant wishes to proceed with the activity as planned, then the applicant must complete an application to degrade state waters.
- 2) The DEQ will issue a preliminary decision either authorizing or denying the degradation within 180 days of the receipt of a completed application. This time period may be extended by agreement of the applicant or whenever an Environmental Impact Statement is required to comply with the Montana Environmental Policy Act (see p. 118).
- 3) The DEQ will issue its preliminary decision and provide public notice and a 30 to 60 day comment period. The department will hold a hearing if it determines there is a significant degree of public interest.
- 4) Within 60 days after the close of the public comment period, the DEQ will issue a final decision accompanied by a statement of basis for the decision and, if applicable, a statement of conditions. An interested person<sup>6</sup> wishing to challenge the final decision may request a hearing before the Board of Environmental Review within 30 days of the DEQ's decision.

Statute: 75-5-303, MCA

Rule: ARM 17.30.706-708

### 4. **Additional Information**

#### Outstanding Resource Waters

State surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995 are classified

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<sup>6</sup> Interested person is defined in statute as the applicant, or a person who has a real property, economic or watered right that is or may be directly and adversely affected by the DEQ's decision, (75-5-103(13), MCA).

as outstanding resource waters. Other state waters classified as outstanding by the Board of Environmental Review (BER) and approved by the Legislature, may be designated as *outstanding resource waters*.

The DEQ may not grant an authorization to degrade waters in this classification or allow a new or increased point source discharge that would result in a permanent change in water quality.

A person may petition the BER to classify waters as outstanding resource waters. In determining whether a water should be thus classified, the Board will consider 1) whether the waters have been designated as Wild and Scenic, 2) the presence of threatened or endangered species, 3) the presence of an outstanding recreational fishery, 4) whether the waters provide the only source of suitable water for a municipality or industry, 5) whether the waters provide the only source of suitable water for a domestic water supply and 6) other factors that indicate outstanding environmental or economic factors.

The BER may reject or approve the petition. If the Board rejects the petition, it will specify in writing the reasons for the rejection and state the petition's deficiencies. If the Board accepts the petition, it will require the completion of an Environmental Impact Statement (EIS) (see MONTANA ENVIRONMENTAL POLICY ACT, p. 118). The petitioner is responsible for all costs associated with the EIS. The classification is not effective until approved by the Legislature.

The Board may deny an accepted outstanding resource water petition if the criteria for establishing outstanding resource waters have not been met or if, based on the information available to the Board from the EIS or other sources, approving the outstanding resource waters classification petition would cause significant adverse environmental, social or economic impacts.

Statute: 75-5-103 and 75-5-315 through 317, MCA

## **WATER POLLUTION: FEDERAL - INDIAN RESERVATIONS**

### **1. Types of Activities Regulated**

Under the federal Clean Water Act, a person who discharges pollutants from a point source into waters of the United States<sup>7</sup> must obtain a National Pollutant Discharge

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<sup>7</sup> Waters of the United States includes essentially all surface waters such as all navigable waters and their tributaries, all interstate waters and their tributaries, all wetlands adjacent to these waters, and all impoundments of these waters. (See <http://www.nwo.usace.army.mil/html/od-r/reg-intro.html#Waters>.)

Elimination System (NPDES) permit. The U.S. Environmental Protection Agency (EPA) issues NPDES permits for discharges within the boundaries of Montana's seven Indian reservations, including discharges on fee lands.

The Clean Water Act also allows a tribal government to apply for *treatment-as-a-state status* and, upon approval by the EPA, to issue NPDES permits for dischargers on a reservation. No tribes in Montana have treatment-as-a-state status for the issuance of NPDES permits. However, the Fort Peck Tribes and the Confederated Salish and Kootenai Tribes do have approved water quality standards that govern permit limits as well as the authority for 401 certification for the placement of dredged or fill materials into waters of the United States on the Fort Peck and Flathead Reservations. Approval of water quality standards on the Blackfeet and Northern Cheyenne Reservations are pending.

Statute: 33 USC 1251, *et seq.*, (federal Water Pollution Control Act)

Contact: U.S. ENVIRONMENTAL PROTECTION AGENCY  
Montana Office, Helena

CONFEDERATED SALISH AND KOOTENAI TRIBES (see  
APPENDIX 5 for contact information)

FORT PECK TRIBES (see APPENDIX 5 for contact information)

## **WATER WELLS**

### **1. Types of Activities Regulated**

All wells must be drilled by a water well contractor, water well driller or monitoring well constructor licensed by the Board of Water Well Contractors (BWWC) or by a person who has obtained a permit from the BWWC to drill a well on their own land for agricultural or residential use.

Within 60 days after completion of the well, water well contractors and drillers must file a well log report form with the Montana Bureau of Mines and Geology (MBMG). Forms may be mailed to the Ground Water Information Center at the MBMG or filed electronically at <http://mbmggwic.mtech.edu>.

Wells drilled by individuals for private use must conform to the minimum construction standards set by the BWWC. See also WATER APPROPRIATIONS - GROUND WATER, p. 176.



Statute: 37-43-101, *et seq.*, MCA  
85-2-516, MCA

Rule: ARM 36.21.634, *et seq.*

Contact: DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION  
Water Resources Division office in Helena; or local Water  
Resources Regional Offices (see APPENDIX 2)

DEPARTMENT OF NATURAL RESOURCES AND  
CONSERVATION  
BOARD OF WATER WELL CONTRACTORS

MONTANA TECH OF THE UNIVERSITY OF MONTANA  
Bureau of Mines and Geology

## 2. **Application Requirements**

A person planning the drilling, making, construction, alteration or rehabilitation of one or more water or monitoring wells for underground water must file a license application with the BWWC. The application must include verification of one or more years in the water well or monitoring field or equivalent education, experience or both.

Individuals applying for a permit to drill a well on their own property must show interest in the land on which the well will be constructed and the method of construction to be used. Permits are often issued the same day if the application is complete.

## 3. **Permitting Procedures**

Water well driller and monitoring well constructor license applications are reviewed for completeness by the DNRC. Once the application is reviewed, then an exam may be taken at a DNRC office in Helena or at the Water Resources Division regional offices. A bond or its equivalent must be posted by water well contractors and monitoring well constructors. Licenses are issued when the exam is passed and any required bonds are submitted.

Rule: ARM 36.21.402, *et seq.*

4. **Fees**

A. There is a fee of \$35 for filing a Notice of Completion.

B. Driller's license application and license renewal fees are:

<b>Category</b>	<b>Application Fee</b>	<b>Renewal Fee</b>	<b>Dates Valid</b>
Water Well Contractor	\$300	\$250	July 1 - June 30
Water Well Driller	\$250	\$150	July 1 - June 30
Monitoring Well Constructor	\$300	\$250	July 1 - June 30

C. There is no fee for filing the well log report form. There is no licensing fee for drilling a well on one's own property.

Rule: ARM 36.12.103 and 36.21.415